IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8.9.2006

C O R A M :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

A.S.NO.913 OF 1996

V.S.B.Sikkandar ... Appellant

-vs-

1. K.M.Khader Gani
2. The Tamil Nadu State Wakf
   Board, rep. By its
   Secretary, Santhome High Road,
   Madras-4. ... Respondents

Appeal against the Judgment and Decree of the learned Principal Sub Judge, Nagapattinam, dated 10.4.1996 made in O.S.No.192 of 1993.

For Appellant :: Mr.G.Nagarajan

For Respondents :: Mr.M.A.M.Azeezur Rahman for R1
:: Mr.A.S.Kaizer, for R2

*****

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The appellant is the plaintiff, who laid O.S.No.192 of 1993 before the learned Principal Sub Judge, Nagapattinam, for declaration to declare that he is the sole trustee of the Wakf, known as 'Sikkandhar Trust of Nagore'; for permanent injunction restraining the first defendant in interfering with the plaintiff's management in the Trust and for various other reliefs, on the following facts and circumstances:-

2.1. The plaintiff is a resident of Nagore and he hails from an affluent and pious family of Muslims. His ancestor one Sikkandhar Rowthar, who scrupulously followed the Mohammedan

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

tenets, dedicated the suit schedule properties to a Wakf and a Wakf Deed came to be registered on 16.12.1904. The said Sikkandhar Rowthar, being the founder of the Trust, constituted himself the Wakif and in terms of the Wakf, after the lifetime of the said Sikkandhar Rowthar, his son-in-law one Yusuff Serang shall be the Wakif and after his death, a male descendant of the family would become the trustee. But, since the said Yusuff Serang predeceased Sikkandhar Rowthar, his son, Bava Moideen, being the only male descendant, became the Wakif and was administering the Trust.

2.2. While the matter stood thus, the said Bava Moideen died in the year 1953 and the plaintiff is the only male issue in the family and since, he was then a minor, one Mohamed Ghouse endeared himself to the plaintiff's family and was looking after the properties on his behalf. After the death of the said Mohamed Ghouse, the plaintiff, under law, became the only Wakif and his status has to be formally declared in view of the orders of the 2nd respondent Board. The lands are under the cultivation of the tenants and the buildings are under the possession of lessees. It is the case of the plaintiff that his close relatives have also recognised his indisputable right to trusteeship.

2.3. However, the first respondent, who is another descendant on the female line of the founder, claiming a right over the trusteeship, filed an application before the 2nd respondent Board, who passed an order on 27.6.88 recognising the first respondent as a Trustee of the Wakf. On coming to know of this, when the plaintiff moved an application before the 2nd respondent Wakf Board, the same was dismissed on 19.1.93. Hence, aggrieved against the said orders of the 2nd respondent Wakf Board, the plaintiff has filed the suit for the reliefs as referred to above.

3.1. The first respondent/first defendant resisted the suit on the ground that since the relief sought for by the plaintiff is as per Section 55 of the Wakf Act read with Section 92 of the Code of Civil Procedure, a prior permission must be obtained from the Wakf Board and since the same has not been obtained, the suit is not maintainable. As per Section 15(2)(g) of the Wakf Act, the Wakf Board has powers to appoint or to remove the Mutavallis in accordance with the provisions of the Wakf Act and in consonance with the terms of the Wakf Deed. Admittedly, the plaintiff was not appointed by the Wakf Board and after the death of Mohamed Ghouse in 1986, the plaintiff was not taking care of the Wakf and since, there was no one to take care of the trust, the 1st defendant, being the male member of the family through the daughter of the founder, applied before the Wakf Board to appoint him as a Mutawalli and the Board, after holding an enquiry,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

appointed him as the Mutawalli.

3.2. It is the further case of the first defendant that the contention of the plaintiff that the descendants from female line are prohibited from becoming the trustee is not correct, since, what is referred to in the Deed is "Santhdhi", which includes both female and male descendants from among the descendants, who are eligible to be the Mutawalli. Thus, pointing out that the application filed by the plaintiff before the 2nd respondent Board, for appointing him as the Mutawalli, had been dismissed on 19.1.93, the first respondent pleaded that the suit has to be dismissed, as the relief sought for is totally misconceived and ill-advised. The suit is also barred by limitation and is not maintainable in law.

4. Heard the rival contentions of both the parties. Even though the Wakf Board was a party to the suit, it remained ex parte before the Court below and thus, suffered an exparte decree. Therefore, in the above appeal, the Wakf Board was not made as a party respondent. However, this Court, taking note of the provisions of the Tamil Nadu Wakf Act, 1995, suo motu issued a notice to the Wakf Board and heard Mr.A.S.Kaizer, learned counsel appearing on behalf of the Wakf Board. Mr.A.S.Kaizer, learned counsel, brought to our notice that the Wakf Act, 1995 (hereinafter will be referred to as 'the Act'), came into force from 1.1.96, i.e., even prior to the judgment and decree dated 10.4.96 made in the suit and hence, the learned counsel submits in view of the same, the Civil Court has no jurisdiction to try the suit filed relating to a Wakf or Wakf property and only the Tribunal, which the State Government shall by notification in the Official Gazette constitute, has power to determine any dispute or question or any other matter relating to a Wakf or Wakf property.

5.1. In view of the above submission of the learned counsel appearing for the Wakf Board, even before going into the merits of the case, it is apt to refer to the relevant provisions of the Wakf Act, 1995, with a view to find out whether the Court below has jurisdiction to try the suit filed relating to the wakf property.

WEB COPY

5.2. As pointed out by the learned counsel appearing for the Wakf Board, Section 83(1) of the Act provides for the constitution of the Tribunals for determination of any dispute, question or other matters relating to a wakf or wakf property under the Act and also defines the local limits and jurisdiction for each of such Tribunals. As per Section 83(4) of the Act, the Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and as per Section 83

https://hcservices.ecourts.gov.in/hcservices/

(5) of the Act, the Tribunal shall be deemed to be a Civil court and shall have the same powers as may be exercised by a Civil court under the Code of Civil Procedure while trying a suit or executing a decree or order.

5.3. In view of the constitution of such Tribunals, Section 85 bars the jurisdiction of the Civil Courts, which reads as follows:-

> "85. Bar of jurisdiction of Civil Courts. - No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal."

That apart, Section 90 contemplates notice of suits, etc., by Courts, which reads as follows:-

> "90. Notice of suits, etc., by Courts. - (1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the Court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.
> (2) Whenever any wakf property is notified for sale in execution of a decree of a Civil Court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the Court, Collector or other person under whose order the sale is notified.
> (3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the Court in this behalf.
> (4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the Court or other authority under whose order the sale was held.

5.4. Section 92 of the Act makes it mandatory that the Board should be a party to a suit or proceeding, which reads thus:-

> "92. Board to be party to suit or proceeding. - In any suit or proceeding in respect of a wakf or any wakf property, the Board may appear and plead as a party to the suit or proceeding."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Section 93 again prohibits the power to compromise a suit by or against mutawallis without the sanction of the Board, which reads thus:-

> "93. Bar to compromise of suits by or against mutawallis. - No suit or proceeding in any Court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board."

5.5. A harmonious construction of the above relevant provisions of the Act, makes it clear that after 1.1.96, the Civil Court, viz., the Principal Sub Court, Nagapattinam District, was ceased to have jurisdiction to try the present suit, viz., O.S.No.192 of 1993 and pass judgment and decree thereon, either decreeing the suit as prayed for or dismissing the same. Hence, in our considered opinion, of course, without going into the merits of the claims of either parties and the findings of the Court below thereon, we find that the learned Subordinate Judge, Nagapattinam, has committed an error in law, apparent on the face of record, for having tried the suit and dismissed the same after 1.1.96, in view of the bar under Section 85 of the Act and therefore, the same is a nullity in the eye of law.

6. The above view of ours, is also supported by the judgment of a Division Bench of this Court dated 31.1.2005 in the case of SALAM KHAN v. THE TAMIL NADU WAKF BOARD & OTHERS (2005-1-L.W.676). The Division Bench, after referring to the relevant provisions of the Act, held as follows:-

> " 6. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word "Wakf" has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal. It is not proper for this Court to straight away entertain writ petitions relating to a Wakf or Wakf property when there is a special Tribunal constituted for this purpose."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

7. In view of the discussion made above, we are of the considered opinion that the judgment and decree dated 10.4.96 made in O.S.No.192 of 1993 on the file of Principal Subordinate Judge, Nagapattinam District, has to be set aside and accordingly, it is set aside and the appeal is allowed. The plaintiff/appellant is at liberty to approach the Special Tribunal constituted to try the suits under the Wakf Act, 1995, for appropriate relief, if he is so advised and on receipt of any such application from the plaintiff/appellant, the Tribunal shall condone the delay occurred due to the pendency of the above appeal before this Court. No costs.

sra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Principal Subordinate Judge,
Nagapattinam.

2. The Secretary,
Tamil Nadu State Wakh Board,
Santhome High Road, Chennai 600 004.

3. The Record Keeper, VR Records, High Court, Madras

+1cc to Mr. G. Nagarajan, Advocate sr no. 41670
+2cc to Mr. M.A.M. Azeezur Rahman, Advocate sr no. 41532
+1cc to Mr. A.S. Kaizer, Advocate sr no. 422446

JSK(CO)
NM(06.11.2006)

A.S.No.913 of 1996

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/